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September 12, 2003

**VIA HAND DELIVERY**

Mary L. Cottrell, Secretary  
Department of Telecommunications and Energy  
One South Station  
Boston, MA 02110

**Re: D.T.E. 01-106-A, Investigation into Increased Penetration Rates for  
Discounted Electric, Gas and Telephone Service**

Dear Ms. Cottrell:

Enclosed for filing, on behalf of Bay State Gas Company, are an original and 12 copies of Bay State's Motion for Clarification and Response of Bay State Gas to Motion of NSTAR in the above-captioned matter.

Please return a date-stamped copy of this letter in the return envelope provided.

Thank you for your assistance with this filing.

Very truly yours,



Patricia M. French

Cc: Service List

## CERTIFICATION

I, Patricia M. French, hereby certify that I have served a copy of the within on each of the individuals on the service list on file for DTE 01-106 as maintained by the Secretary of the Department of Telecommunications and Energy.

Dated at Westborough, Massachusetts, this 12<sup>th</sup> day of September, 2003.



Patricia M. French

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

**INCREASED PENETRATION RATES  
FOR DISCOUNTED ELECTRIC, GAS  
AND TELEPHONE SERVICE**

**D.T.E. 01-106-A**

**MOTION FOR CLARIFICATION OF  
BAY STATE GAS COMPANY  
AND  
RESPONSE OF BAY STATE GAS TO MOTION OF NSTAR**

**I. INTRODUCTION**

Pursuant to 220 C.M.R. 1.04(5), Bay State Gas Company ("Bay State") seeks clarification of the Department's Order in the above-captioned docket. See also, Boston Edison Co., D.P.U. 92-1A-B at 4 (1993); Whitinsville Water Co., D.P.U. 89-67-A at 1-2 (1989).

In addition, consistent with the Hearing Officer's Memorandum of September 2, 2003, Bay State responds to the Motion for Reconsideration (in Part) or in the Alternative, Motion for Clarification filed by Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company, d/b/a NStar Electric, and NStar Gas Company (collectively, "NStar") ("NStar Motion").<sup>1</sup>

**A. Background**

On August 8, 2003, the Department of Telecommunications and Energy issued its order ("Order") requiring jurisdictional electric and gas companies to exchange customer

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<sup>1</sup> Since the issues raised by Bay State's Motion for Clarification and its Response to the Nstar Motion are based on the same facts and legal issues, Bay State presents its Motion and Response in a single document.

information with EOHHS for the sole purpose of enrolling eligible customers in discount programs. Order at 10. On August 28, 2003, NStar filed its Motion for Reconsideration (in Part) or in the Alternative, Motion for Clarification (“NStar Motion”). The NStar Motion seeks reconsideration of the Department’s directive to companies to begin implementation of a computer matching program without an investigation of the costs involved and the bill impacts for customers who will subsidize the low-income discount rate, the development of a mechanism to allow for cost recovery, and other details that should be completed prior to implementation of the data-sharing program. In the alternative, NStar seeks clarification from the Department relative to the intended timing of implementation. On September 2, 2003, the Department permitted until September 12, 2003 for the parties to respond to the NStar Motion.

**B. Summary**

Bay State moves the Department to clarify that the Department intends to investigate, as part of Phase II, appropriate rate recovery mechanisms for revenue reductions or bill impacts that occur as a result of the Department’s Order.

In addition, Bay State believes NStar’s Motion meets the Department’s standard, has merit and should be granted.

**II. DISCUSSION**

**A. The Department Should Clarify Whether It Intends to Permit Companies to Seek Revenue Recovery as Well as Cost Recovery in Phase II**

As the Department has stated on many occasions, clarification of previously issued orders may be granted when it is silent as to the disposition of a specific issue requiring determination in the order, or when the order contains language that is sufficiently ambiguous to leave doubt as to its meaning. Boston Edison Co., D.P.U. 92-

A-B at 4 (1993); Whitinsville Water Co., D.P.U. 89-67-A at 1-2 (1989). Clarification will not involve examining the record anew in order to substantively modify the Department's decision. Boston Edison Co., D.P.U. 90-335-A at 3 (1992), citing Fitchburg Gas & Electric Light Co., D.P.U. 18296/18297, at 2 (1976). Since the Department permits companies to seek clarification of an issued order if the order is unclear on a material issue, Bay State respectfully seeks clarification

In its Order, the Department stated

“There are issues related to cost recovery that the Department intends to address by means of a second proceeding. The Department is aware that utilities may incur a decrease in revenues related to the computer matching program resulting from higher participation in discount rates. The Department will consider proposals for rate recovery *based on increased expenses resulting from a computer matching program* in a second phase.”

Order, D.T.E. 01-106-A at 14-15 (2003).

The plain language of the order articulates that companies may seek recovery of “increased expenses” associated with implementing the data sharing program, but omitted any discussion of whether companies may defer and seek recovery of lost revenues or recognition of the bill impacts associated with increased participation of customers in the low-income discount as part of Phase II. Bay State, and others, raised this substantive issue in filed comments. Bay State asks the Department to clarify that all costs resulting from the implementation of data sharing, including bill impacts, as well as lost revenues resulting from an increase in participation in the low-income discount

program, may be deferred for later recovery and are intended to be included in the analysis resulting from Phase II proceedings and orders.<sup>2</sup>

**B. NStar Has Met the Standard of Review**

Under the Department's standards, reconsideration is granted where it is shown that the Department's review or treatment of a material issue was the result of mistake or inadvertence. See 220 C.M.R. 1 1(10); Massachusetts Elec. Co., D.P.U. 90-261-B at 7 (1991); New England Tel. & Tel. Co., D.P.U. 86-33-J at 2 (1989). Bay State agrees with NStar that it appears the Department inadvertently ordered jurisdictional companies to begin sharing customer data in advance of the necessary administrative work to be done to authorize release of eligibility information. Bay State also agrees that it appears that the Department, while ensuring for each utility the opportunity to recover costs incurred as a result of increased participation, may have misapprehended the timing of such a review when it ordered companies to commence data sharing. Accordingly, Bay State requests, consistent with the NStar Motion that the Department: (1) grant NStar's Motion; (2) reconsider its mandate that requires companies to commence data-sharing before the agencies have completed the necessary work to determine eligibility and willingness to participate; and, (3) reconsider the timing of implementation, and suspend the implementation portion of the order until cost recovery issues are finalized in Phase II of the proceeding.

**C. NStar has Raised Substantive Concerns that also Impact Bay State**

The Department states in the Order that it believes it will take approximately one year from the date agencies begin using applications with language authorizing the

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<sup>2</sup> Granting of the NStar Motion, of course, will permit companies to delay the incurrence of costs until the Department determines the appropriate rate recovery mechanism. Bay State still seeks the Department's reassurance that recovery of resulting bill impacts is intended to be reviewed in the Phase II.

release of eligibility information to utilities to implement the computer matching program. Order at 10. In the interim, the Department requires utilities to continue current enrollment procedures, even though numerous issues are still undecided. NStar Motion at 4. NStar points out that the Department's order does not "lay out a timeline that would call for the completion of these prerequisites prior to implementation." Id. Bay State agrees. Based on its current understanding, Bay State believes this very important policy initiative may have a significant financial impact on Bay State. Accordingly, Bay State believes the NStar Motion has merit and should be granted.

### **III. CONCLUSION**

WHEREFORE, for all the reasons set forth in this Motion and Response, Bay State Gas Company respectfully requests that the Department of Telecommunications and Energy grant Bay State Gas Company's Motion for Clarification, and grant NStar's Motion for Reconsideration (in Part) and Motion for Clarification.

Respectfully submitted,

BAY STATE GAS COMPANY

By its Attorney,



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Dated: September 12, 2003